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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Christa Eastes,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-18-00013-PHX-DWL

ORDER

15 Pending before the Court is the motion for an award of attorneys' fees under 42
16 U.S.C. § 406(b), submitted by Plaintiff's counsel, Eric Slepian ("Counsel"), which the
17 Commissioner does not oppose.¹ (Doc. 30.) Counsel seeks \$13,394.75 in § 406(b) fees,
18 which equates to 25% of Plaintiff's past-due benefits. (Doc. 30 at 1-2; Doc. 31-1 at 3.)

19 The client-attorney fee agreement provides for a contingency fee—Plaintiff agreed
20 that the attorneys' fee would be 25% of all past-due benefits awarded to her. (Doc. 30-1
21 at 8.) This is unsurprising, as 25% contingency fee agreements are nearly ubiquitous in
22 the context of social security appeals. *Gisbrecht v. Barnhart*, 535 U.S. 789, 802–04
23 (2002).

24 Section 406(b) "calls for court review" of contingency fee agreements. *Id.* at 807–
25 08. "Congress has provided one boundary line: Agreements are unenforceable to the
26 extent that they provide for fees exceeding 25 percent of the past-due benefits." *Id.*

27 ¹ The Commissioner "has no direct financial stake in the answer to the § 406(b)
28 question" because the fees, if granted, will be taken out of Plaintiff's past-due benefits,
and therefore the Commissioner's role "resembl[es] that of a trustee for the claimants."
Gisbrecht v. Barnhart, 535 U.S. 789, 798 n.6 (2002).

1 “Within the 25 percent boundary, as petitioners in this case acknowledge, the attorney for
2 the successful claimant must show that the fee sought is reasonable for the services
3 rendered.” *Id.*


4 The Court must determine whether it is appropriate to reduce Counsel’s recovery
5 “based on the character of the representation and the results the representative achieved”
6 by assessing, for example, whether Counsel is “responsible for delay” or whether “the
7 benefits are large in comparison to the amount of time counsel spent on the case.”² *Id.* at
8 808. “In this regard, the court may require the claimant’s attorney to submit, not as a
9 basis for satellite litigation, but as an aid to the court’s assessment of the reasonableness
10 of the fee yielded by the fee agreement, a record of the hours spent representing the
11 claimant and a statement of the lawyer’s normal hourly billing charge for noncontingent-
12 fee cases.” *Id.*

13 The Court will require Counsel to produce a record of the hours spent representing
14 Plaintiff to aid in the Court’s reasonableness assessment.

15 Accordingly,

16 **IT IS ORDERED** that by **March 13, 2020**, Counsel shall file a supplement to the
17 request for fees containing a record of the hours spent representing Plaintiff.

18 Dated this 27th day of February, 2020.

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22 _____
23 Dominic W. Lanza
24 United States District Judge
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26 ² This determination does not equate to use of the lodestar method. *Crawford v.*
27 *Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (“The lodestar method under-compensates
28 attorneys for the risk they assume in representing SSDI claimants and ordinarily produces
remarkably smaller fees than would be produced by starting with the contingent-fee
agreement. A district court’s use of the lodestar to determine a reasonable fee thus
ultimately works to the disadvantage of SSDI claimants who need counsel to recover any
past-due benefits at all.”).